



# University of Hawaii at Manoa

**Environmental Center**  
Crawford 317 • 2550 Campus Road  
Honolulu, Hawaii 96822  
Telephone (808) 948-7361

Office of the Director

RL:0365

## SB 1591 RELATING TO ENVIRONMENTAL QUALITY

Statement for  
House Committee on  
Ecology and Environmental Protection  
Public Hearing, 27 March 1979

By  
Doak C. Cox  
Jacquelin N. Miller  
Environmental Center

SB 1591, amending the State Environmental Impact Statement (EIS) law, is a companion bill to HB 798, a bill which this committee considered at a hearing on 23 February 1979. The following statement is based on the statement on HB 798 we presented at that hearing (RL:0331), and on other testimony presented in that hearing and in a Senate Committee hearing on SB 1591. The statement does not reflect an institutional position of the University.

For reasons discussed by us and others earlier, we believe passage of a bill such as SB 1591 is desirable. However, we recommend two revisions before its final passage.

The first is related to reduction in the period during which a suit would have to be instituted in order to challenge the failure by a proposing or approving agency to determine whether or not an EIS is required for a particular project (p. 16, l. 1 et seq). The language of the present law is confusing but it requires that such a suit must be instituted within periods of 180 days beginning at the time of an agency decision to carry out or approve the project or at the time the project is commenced. SB 1591 would reduce the times to a period of 90 days beginning with the start of the project in the case of an agency project and a period beginning 30 days after application and ending 90 days after agency approval in the case of a private action. The reduced periods may in general be adequate, but in one circumstance will not be adequate.

In the case of a private project requiring an agency permit. If there has been no agency determination whether or not an EIS is required, possible environmental issues with the project will not be brought to public attention by the Environmental Quality Commission Bulletin. It is possible that neither the permit application nor the agency grant of the permit will effectively be brought to the attention of the public by any other means. A concerned person may, thus, have no knowledge of the project until it is actually initiated, and the initiation may be much more than 90 days after the grant of the permit.

As in our earlier statement, we suggest that the amendment applying to case (2) in HRS 343-[6]7 (SB 1591, p. 16, ls. 14-17) be revised to add the double-underlined wording below:

(2) In the case of an applicant action under section 343-6c, within the period starting thirty (30) days after the date of the action and ending ninety (90) days after agency approval or thirty (30) days after the commencement of the action, whichever is later.

The second revision concerns the time limit to the processes of review, response to review comments, and acceptance of an EIS on a private project needing an agency approval. Under the present law, if an acceptance decision is not made by the approving agency within 60 days after the submission of the EIS, the EIS is to be deemed accepted. The EQC regulations allow a period of 30 days for the public review of the EIS and 14 days thereafter for the response of the applicant, and hence 16 days thereafter for the acceptance decision. There have been cases in which review comments indicated needs for revisions more extensive than the applicants could accomplish during the 14-day response period. In such a case, if the applicant and the approving agency agrees, the practice has been to allow extension of the 14-day response period and the overall 60 day period. However, we understand that the Attorney General's office has ruled that such an extension is illegal.

If an EIS cannot be revised by the applicant within the 60-day period so as to make it acceptable, the agency will now have no option but to determine that it is not acceptable. The law is not clear what will happen then, but at the very least it would appear that after the revision, the EIS would have to be resubmitted and go through the entire 30-day public review period again.

As recommended in "The Hawaii State Environmental Impact Statement System" (Env. Ctr., SR:0019, January 1978), we recommend that the law be amended so that the 60 day period for review, response, and acceptance decision, may be extended by the mutual agreement of the applicant and the agency. This amendment might be accomplished by revising HRS 342-[2]3(c) so as to add the wording underlined below to the second sentence pertaining to the 60-day time limit (SB 1591, p. 11, ls. 16-19):

The statement shall be deemed accepted if the agency fails to accept or not accept the statement within sixty days after the receipt of the statement, providing however that the sixty day period may be extended by the mutual agreement of the applicant and the agency.